

1  
2  
3  
**FILED**  
4

5 NOV 18 2005  
6

7 RICHARD W. WIEKING  
8 CLERK, U.S. DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE  
11

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 UNITED STATES OF  
16 AMERICA ,  
17

18 Plaintiff,  
19

20 v.  
21 BRIAN SAMINATHEN  
22

23 No. CR05-00680 JW  
24

25 ORDER STAYING  
26 DRUG/ALCOHOL TESTING AND  
27 WARRANTLESS SEARCH  
28 REQUIREMENTS IN PRETRIAL  
RELEASE CONDITIONS

1  
2  
3  
4  
5 IT IS HEREBY ORDERED, in light of the recent decision by the Court of  
6 Appeals for the Ninth Circuit in *United States v. Scott*, 424 F.3d 888 (9th Cir.  
7 September 9, 2005), that the provisions of any order (including any pretrial bond)  
8 previously entered by any judge of this court that subjected a defendant whose case  
9 has not been resolved (by trial, motion, or change of plea) to random tests for  
10 substance abuse (drugs or alcohol) and/or to warrantless searches are STAYED.

11 Defendants who have been convicted (by guilty plea or trial) and who are  
12 awaiting sentence or self-surrender remain subject to *all* release conditions previously  
13 imposed, including random testing for substance abuse and/or warrantless searches.

14 Substance abuse treatment programs and half-way houses (e.g., Cornell  
15

1 Corrections) fix the terms and conditions under which persons may be admitted to  
2 and remain in their programs. These programs may expel or terminate any person  
3 who refuses to comply with or who violates the terms and conditions set by the  
4 programs. If a defendant who was ordered by the court, as a condition of pretrial  
5 release, to participate in a substance abuse program or to reside in a half-way house,  
6 is terminated or expelled from the program, it will be necessary for the court to  
7 reconsider whether that defendant may remain out of custody (on a changed set of  
8 conditions) pending the disposition of the criminal proceedings.

9 Persons who signed bonds as SURETIES and/or who agreed to serve as  
10 CUSTODIANS for a defendant who was subjected, under the terms of the bond, to  
11 substance abuse testing and/or warrantless searches, are hereby NOTIFIED THAT  
12 THE TERMS OF THE BOND HAVE BEEN CHANGED as reflected above.

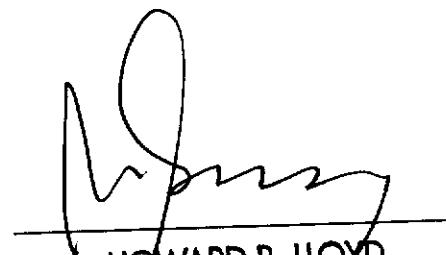
13 IT IS FURTHER ORDERED that the Pretrial Services Office shall mail a copy  
14 of this ORDER AND NOTICE to all sureties and/or custodians on bonds whose  
15 provisions for substance abuse testing and/or warrantless searches are stayed by this  
16 ORDER.

17  
18 IT IS SO ORDERED.

19 Dated: November 15, 2005.

20 NOV 18 2005

21  
22 Copies to: Pretrial, U.S. Attorney,  
23 Office of Public Defender.



24  
25  
26  
27  
28

Howard R. Lloyd  
United States Magistrate Judge

file: order and notice re changing release conditions